

Section 2.4

General and Specific Code Sections

Questions posed at the Roundtable

This document provides guidance on the following questions posed at the Hearing Officer Roundtable:

- Should the Food and Agricultural Code (FAC) or Title 3, California Code of Regulations (3CCR) be cited?
 - What are the factors to consider?
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Specific versus general

Under a long line of cases going back to the 1800s, the Supreme Court of California has held that:

- A general provision is controlled by specific provisions.
 - Specific provisions relating to a particular subject are controlling over a general provision and govern in respect to that subject.
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DPR's regulations outline the specifics of pesticide worker safety

The Department of Pesticide Regulation's (DPR's) regulations *specifically* outline the responsibilities of employers and employees in the area of pesticide worker safety. FAC section 12973 is a "general provision" related to the use of pesticides, and therefore, makes no mention of specific pesticide worker safety or employer-employee responsibilities in relation to pesticide worker safety.

Worker safety requirements versus FAC §12973

When initiating a civil penalty action against an employer for matters involving pesticide worker safety, county agricultural commissioners (CACs) are encouraged to charge violations of DPR's specific pesticide worker safety or other applicable regulations, rather than FAC section 12973.

For example, when an employer does not provide safety equipment such as goggles, which may be part of the federal worker protection standard in Title 40, Code of Federal Regulations (40 CFR), Part 170, and be on the label, it is more appropriate to cite 3CCR section 6738 rather than FAC section 12973. 3CCR section 6701 provides that it is intended that California's pesticide worker safety regulations, rather than those found in 40 CFR, Part 170, be enforced by DPR and CACs within California.

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Folklore about laws, regulations, and previous decisions

On occasion, we hear generalizations comparing laws and regulations that may or may not be true in any given situation. These generalizations should not be factors relied upon to determine which code section or regulation to use when preparing a civil penalty action. Consider these examples:

| Generalization | Think About It |
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| “The laws have more authority than the regulations so you should cite them instead, whenever possible.” | Laws come from the Legislature. Regulations come from an administrative agency. The Legislature passes laws granting the administrative agency authority to promulgate the regulations. If the law or regulation is valid, the authority for each ultimately comes from the same source and both carry the weight of the law. |

| Generalization | Think About It |
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| “It’s easier to use a law than a regulation because laws are easier to prove.” | This statement may be true in some cases. However, the agency initiating the action has a responsibility to analyze the situation and choose the most appropriate code or regulation section. In most cases, the best code or regulation section to choose is the one whose specific elements most closely match the specific facts of the case. |

| Generalization | Think About It |
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| “We cited that section before without any problem.” | The law may stay the same, but the facts of each case are unique. The evidence offered to prove those facts will differ. How the Hearing Officer weighs the credibility of the evidence and witnesses will vary. All these will affect how the advocate presents the case and what decision the Hearing Officer makes. |

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General and Specific Code Sections, Continued

Tips

- Do not rely solely upon sections noted on inspection forms to determine the section you should cite in your administrative civil penalty action. Those sections may be cited, but you should cite the section most appropriate to your specific administrative civil penalty action.
 - Check similar or corresponding laws and regulations for the subject area of your violation to determine if other sections might be more applicable to the situation.
 - Determine the elements of the violation of any section you think you may be able to cite in the administrative civil penalty action.
 - Determine which code or regulation violation has specific elements that can be most clearly and easily established by your evidence.
 - Try to accept that decisions based upon the law may differ from the outcome you would like to see.
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References

- 3CCR section 6701, Interpretation Consistent with Federal Standards
 - 3CCR section 6702, Employer-Employee Responsibilities
 - 3CCR section 6738, Personal Protective Equipment
 - Enforcement Letter 2000-032 (Docket No. 088)
 - Enforcement Letter 2001-055, Civil Penalty Actions Against Employers or Employees for Matters Involving Pesticide Worker Safety
 - Enforcement Letter 2002-025 (Docket No. 109)
 - FAC section 12973
 - Hearing Officer Sourcebook, Second Edition, May 1995
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